# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

          Plaintiff-Appellee,

v

JAMES MAURICE BURIEL, JR.,

          Defendant-Appellant.

UNPUBLISHED
February 21, 2003

No. 238416
Saginaw Circuit Court
LC No. 00-018308-FC

Before: Kelly, P.J. and White and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea-based conviction for first-degree criminal sexual conduct. MCL 750.520b. We affirm.

The trial court denied defendant's motion to withdraw his plea after sentencing, finding that it was not timely filed. MCR 6.311(A). Defendant's motion was filed within the twelve months allowed for an application for leave to appeal, MCR 7.205(F)(3). However, while the trial court erred in finding defendant's motion was untimely, defendant failed to present any reason for withdrawing his plea.

After a plea has been accepted by the trial court, there is no absolute right to withdraw the plea. *People v Haynes (After Remand),* 221 Mich App 551, 558; 562 NW2d 241 (1997). Where a motion to withdraw a plea is made after sentencing, it must be made based on a showing of miscarriage of justice. *People v Ward,* 459 Mich 602, 614; 594 NW2d 47 (1999). The decision whether to grant the motion rests within the discretion of the trial court, and the decision will not be disturbed absent an abuse of discretion. *Haynes, supra.* Where defendant failed to identify a basis for withdrawing the plea, the trial court would have abused its discretion had it granted the motion. *Id.,* 563. The error in finding the motion untimely was harmless.

Defendant also challenges the trial court's denial of defendant's motion to dismiss based on a violation of MCL 780.131, finding defendant was not a state prisoner at the time he was arrested. Defendant waived review of the claim that the 180-day rule was violated upon entry of his unconditional no contest plea. *People v Irwin,* 191 Mich App 113, 120; 480 NW2d 611 (1991).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra